

REMARKS

In the Office Action, the Examiner rejected claim 7 (sic, claim 17) under the second paragraph of section 112, rejected claims 1, 6, 7-19 and 23 as anticipated by Discenzo, rejected claim 2, 3, 21 and 22 as obvious over Discenzo in view of Barber, rejected claims 4 and 5 as obvious over Discenzo in view of Sand, rejected claim 20 as obvious over Discenzo in view of Loble, and cited additional art of record but not relied upon.

35 USC 112, 2nd ¶

Claim 17 has been amended to depend from claim 16 and thereby provide antecedent basis for the noted claim term. The rejection is thereby overcome.

35 USC 102(e)

The **Discenzo** reference supplies a diagnostic/prognostics system to an automobile, truck or bus. The system has a master diagnostics unit to diagnose problems with the vehicle and store vehicle maintenance records. The system includes “subsystem modules” (this term being shortened to “modules” in some instances in the specification) that utilize sensors connected to various parts of the vehicle. The modules of Discenzo are physical units connected to the subsystems of the vehicle. For instance, the diagnostic module has a housing, a display and interface keys (see column 7, line 42 to column 8, line 16). The goal in Discenzo is to predict failure of a vehicular subsystem.

The Discenzo reference provides little information about what use is made of the information obtained by the diagnostic/prognostic system. Mention is made of making a health determination of the machine (column 9, lines 30 - 32). Column 4, lines 21 - 26, disclose that an aspect of the invention is to determine when a vehicle requires maintenance. In column 14, lines 27 - 28, motor maintenance is scheduled to correspond to the state of the motor. At column 20, lines 52 - 56, a wireless communication is provided to permit a dispatcher to determine when a vehicle will require maintenance. A determination is made as to when maintenance is required, in column 21, lines 14 - 26. A notification signal is generated to warn the user if a maintenance problem requires immediate attention, see column 22, lines 32 - 38. Once the analysis is performed, a trend analysis allows the program to plan

a maintenance schedule, see column 22, lines 62 - 67, which, as stated on the top of column 23 results in maintenance not being performed before it is absolutely necessary.

One following the teachings of Discenzo would arrange for the maintenance to be performed when the analysis system indicates that it is needed, when an impending failure is detected. By contrast, the present invention provides that the modules, which are not physical units as in Discenzo but instead are groupings of services, includes an agreement to perform the services prior to an error or failure or prediction of failure. Timing of the agreement thus further distinguishes the present invention from the prior art of Discenzo.

The present invention as claimed provides for agreeing to perform the services of the module prior to the identification or prediction of a failure and performing the services after identification or prediction of a failure. The Discenzo reference does not suggest or teach such features. As such, the claims are not anticipate by the cited Discenzo reference.

35 USC §103(a)

The **Barber** reference (U.S. Patent No. 7,016,774) has a §371 date of July 18, 2003. The present application was filed as a national stage application on November 15, 2001, is a PCT application filed on March 15, 2001, and claims the benefit of a provisional application filed on March 17, 2000. Thus, the present application predates the Barber patent and so the Barber patent is not prior art to the present application. The Barber was a PCT patent application that was published on March 21, 2002, so even if the publication of the PCT application were cited, the present application still predates it.

The rejection of 2, 3, 21 and 22 over the combination of art including Barber is in error. Applicant respectfully submits that these claims are allowable.

The **Sand** reference discloses VOIP which processes and converts the voice datagrams to a format so that the measuring device can measure voice quality. The Examiner relies on the abstract to allege a teaching of performance indicators and two performance levels, but Applicants submit that the person of ordinary skill in the art would not interpret Sand in the

way asserted by the Examiner, so that the claims 4 and 5 are non-obvious over the combination.

The **Lobley** reference, at the cited passage, refers to decisions in making a bicycle purchase. Nineteen factors are considered in their relative importance, which according to the conventional decision system are assigned relative weights for scoring. The reference in general discloses a decision support system. Applicants submit that the person of ordinary skill in the art would not consider this reference relevant to the art of the present invention and even if they did they would learn nothing from its teaching that would suggest changing the teachings of **Discenzo** in a way to provide the invention as claimed.

Thus, **Barber** has been shown not to be prior art, **Sand** and **Lobley** do not relate to particularly relevant art and certainly do not teach or suggest changes to **Discenzo**. Therefore, the claimed invention is a non-obvious improvement over the combination of art cited in the action.

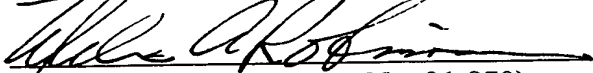
Additional Art

No additional art that was not relied upon has been cited by the Examiner, contrary to the remark in the Office Action.

Conclusion

Applicants respectfully request reconsideration of the election requirement, and favorable consideration and allowance of the present application.

Respectfully submitted,



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